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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,635	03/01/2004	Mark Dinsmore	082251-0188	6536

48329 7590 06/28/2007  
FOLEY & LARDNER LLP  
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EXAMINER
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THOMAS, COURTNEY D

ART UNIT	PAPER NUMBER
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2882

MAIL DATE	DELIVERY MODE
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06/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/790,635	DINSMORE, MARK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Courtney Thomas	2882	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Reissue Applications*

1. The reissue oath/declaration filed with this application is defective because it fails to identify at least one error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.

2. Examiner provides the following excerpts of MPEP § 1414 for succinctness:

In order to satisfy this requirement, a declaration can state as for example:

>

1. < “ Applicant believes the original patent to be partly inoperative or invalid by reason of a defective specification or drawing. ”

>

2. < “ Applicant believes the original patent to be partly inoperative or invalid by reason of the patentee claiming more than patentee had a right to claim in the patent. ”

>

3. < “ Applicant believes the original patent to be partly inoperative or invalid by reason of the patentee claiming less than patentee had a right to claim in the patent. ”

3.

The above examples will be sufficient to satisfy this requirement without any further statement.

>It should be noted that the reissue oath/declaration must also satisfy the requirement for a statement of at least one error being relied upon as the basis for reissue, in the manner set forth in subsection II. below.<

4.

5. Claims 1-32 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

### *Claim Objections*

6. Claims 6, 26 and 30 are objected to because of the following informalities:

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7. Claim 6 line 2 recites: "said electron beam." Examiner notes there is no antecedent basis for the use of this term. (see also claim 26, lines 12-13 ("said electron source") and claim 30, line 3 ("said beam path")).

8. The claims have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the claims.

9. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

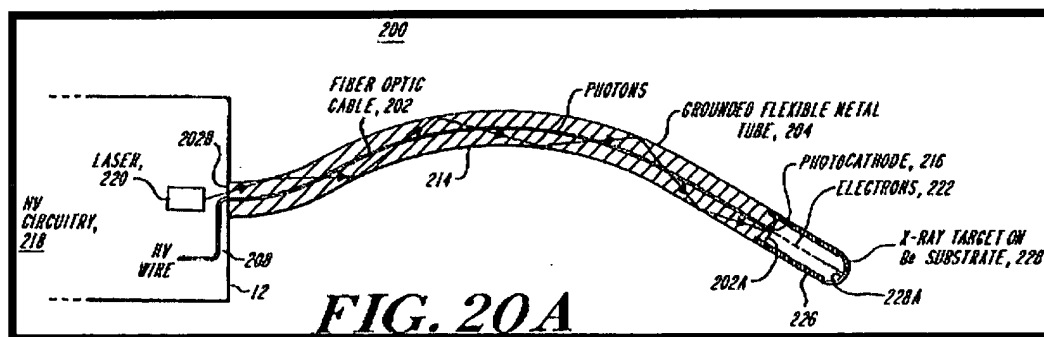
10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

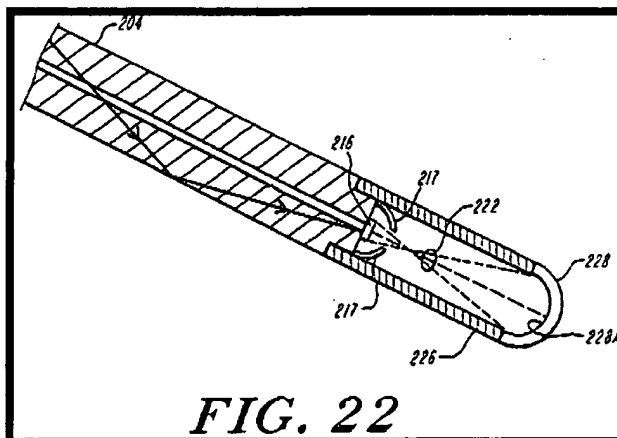
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-24 and 26-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Oettinger et al. (U.S. Patent 5,428,658).

12.





13.

*Figs. 20A & 22 – Radiation Source – U.S. Patent 5,428,658 to Oettinger et al.*

14. As per claims 1-24 and 26-32, Oettinger et al. disclose a therapeutic radiation source comprising: a probe assembly (214) including an optical delivery structure (202 - column 25, lines 7-13); an optical source (220); a radiation generator assembly coupled to the probe assembly, including an electron source (216) responsive to optical radiation for emitting free electrons (222 - note beam path/axis (16) in Fig. 1, not shown above; see also col. 8, lines 17-22) and target element (228 see also column 25, lines 3-6); and means (218) for providing an accelerating voltage between the electron source and target element (see Figs. 20A & 22 shown above; column 24, lines 51-58; see also respective portions of the specification for descriptions of apparatus elements and functionality).

*Allowable Subject Matter*

15. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claim 25 is rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

“Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.”

See MPEP § 1414.01.

16. The following is a statement of reasons for the indication of allowable subject matter:

17. **As per claim 25**, the examiner found no reference in the prior art that disclosed or made obvious a source of therapeutic radiation comprising a probe assembly, wherein one or more reflector elements are disposed at predetermined locations along an inner surface of a capsule; the or more reflector elements being operative to reflect incident laser radiation unabsorbed by a thermionic cathode back to the thermionic cathode, and including all limitations as recited in independent claim 25.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Courtney Thomas whose telephone number is (571) 272-2496. The examiner can normally be reached on M - F (9 am - 5 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Glick can be reached on (571) 272 2490. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Courtney Thomas  
Primary Examiner  
Art Unit 2882